

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SALVADOR DIAZ, on his own behalf
and on behalf of all others similarly situated,

Plaintiff,

-against-

DIVERSIFIED COLLECTION SERVICES, INC.

Defendant.
-----X

07 CIV 11065

JUDGE KEENAN

CLASS ACTION COMPLAINT

FILED
JURY TRIAL DEMANDED

DEC -6 2007

USDC

Plaintiff, by and through his undersigned attorney, alleges upon knowledge as to himself and his own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from the defendant's violation of §1692 *et. seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors within the meaning of 15 U.S.C. § 1692a(6) from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

PARTIES

4. Plaintiff Salvador Diaz (hereinafter "Diaz") is a resident of the State of New York, New York County. On or about October 31, 2007, plaintiff received and came into contact with a form debt collection notice from defendant at plaintiff's home address. Exhibit A.

5. Defendant Diversified Collection Services, Inc. is a California Corporation located at 333 N. Canyons Parkway, # 100, Livermore, California 94551. Defendant attempts to collect debts alleged to be due another. Its Registered Agent is C T Corporation System, 111 Eighth Avenue, New York, New York 10011. Its New York City Department of Consumer Affairs license number is 0958746.

CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action as a nationwide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of himself and all consumers who have received debt collection notices and/or letters from the defendant which are in violation of the FDCPA, as indicated in paragraphs numbered 18-20, and their successors in interest (the "Class"). Excluded from the Class is the defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Diversified Collection Services, Inc. and Performant, Inc.

7. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

8. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, hundreds of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.

9. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

- a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. sections 1692e(10), 1692f(1) and 1692g.
- b. Whether plaintiff and the Class have been injured by the defendant's conduct;
- c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
- d. Whether plaintiff and the Class are entitled to declaratory and/or injunctive relief.

10. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

11. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

12. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

13. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

14. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

15. On or about October 31, 2007, defendant mailed a collection letter addressed to Salvador Diaz. Upon receipt of defendant's letter, plaintiff opened and read it. The letter demanded payment of a debt allegedly owed by plaintiff. A copy of said letter is annexed hereto as **Exhibit A.**

16. On November 21, 2007, the validity of the debt was disputed and demand was made for verification of the debt to include court costs, collection fees, interest or miscellany. **Exhibit B.**

17. On November 27, 2007, defendant sent a letter attempting to collect the debt reiterating a Balance of \$7352.78 and including verification generated in October 2007 which evidenced \$5606.76. **Exhibit C.**

FIRST CAUSE OF ACTION

18. Each of the above allegations is incorporated herein.

19. The letter violated numerous provisions of the FDCPA by the debt collector's collection of fees which the debt collector has failed to provide the basis, either by agreement or law, in violation of 15 U.S.C. § 1692e(10) and 1692f(1).

20. As a result of defendant's abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

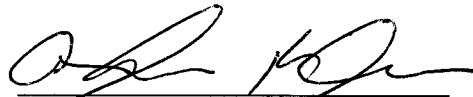
WHEREFORE, plaintiff respectfully requests that the Court enter judgment as follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Awarding plaintiff statutory damages;
- c) Awarding class members the maximum statutory damages;
- d) Awarding plaintiff and the class costs of this action, including reasonable attorneys' fees and expenses; and
- e) Awarding plaintiff and the class such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: December 4, 2007
Uniondale, New York

A handwritten signature in black ink, appearing to read 'Abraham Kleinman', is written over a horizontal line.

Abraham Kleinman (AK-6300)
KLEINMAN LLC
626 RexCorp Plaza
Uniondale, New York 11556-0626
Telephone (516) 522-2621
Facsimile (888) 522-1692

P.O. Box 9046, Pleasanton, CA 94566-9046

Toll free: 888-310-2006



* 5 - 2 1 0 9 9 8 3 7 *

October 31, 2007

SALVADOR DIAZ
APT 5A
52 ARDEN ST
NEW YORK NY 10040-1721

Re: Diversified Collection Services, Inc.
Account No: 90203328787
Treasury Acct No: 000270514
Balance: \$7352.78 as of: October 31, 2007

Claim of: DEPT OF DEFENSE

The U.S. Department of the Treasury has contracted DCS, Inc. to secure the total recovery of the debt you owe the federal agency shown above. You may have noticed that your financial obligation has increased substantially, due to the penalties of default, as reflected in the total balance above.

On a more positive note, DCS can assist you if you are not in a position to pay your debt in full, but wish to enter into an affordable payment program to avoid the ramifications of non-payment. DCS may also be authorized to compromise a portion of your debts should you qualify and be in the position to secure the remaining balance. To determine if you qualify for these offers, you must telephone your DCS account representative at 888-310-2006 to verify your reduced payoff balance and determine your payment due date.

As of the date of this letter, you owe the balance reflected. Because of interest and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you. For further information, write to DCS or call the toll-free number shown above.

This is an attempt to collect a debt by a debt collector, and any information obtained will be used for that purpose.

**SEE THE REVERSE SIDE FOR THE FEDERAL VALIDATION NOTICE
AND OTHER REQUIRED STATE COMPLIANCE INFORMATION.**

IMPORTANT NOTICE OF RIGHTS

If this is the first notice you receive, be advised that:

UNLESS YOU NOTIFY THIS OFFICE WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL ASSUME THIS DEBT IS VALID. IF YOU NOTIFY THIS OFFICE IN WRITING WITHIN 30 DAYS FROM RECEIVING THIS NOTICE, THIS OFFICE WILL OBTAIN VERIFICATION OF THE DEBT OR OBTAIN A COPY OF A JUDGMENT AND MAIL YOU A COPY OF SUCH JUDGMENT OR VERIFICATION. IF YOU REQUEST THIS OFFICE IN WRITING WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE, THIS OFFICE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law.

California – The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8:00 a.m. or after 9:00 p.m. PST. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

Colorado – FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE www.sgo.state.co.us/cadc/cadcmain.cfm

Maine – Maine residents may contact our office by telephone at 800-866-5317 between the hours of 9:00 a.m. to 6:00 p.m. PST.

Massachusetts – Massachusetts residents may contact our office by telephone at 800-866-5317 between the hours of 9:00 a.m. to 6:00 p.m. PST. The business address is: 333 North Canyons Parkway, Suite 100, Livermore, CA 94551-7661. Massachusetts Law requires that we inform you:

NOTICE OF IMPORTANT RIGHTS

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN (10) DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN (7) DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR.

Minnesota – Minnesota Law requires that we inform you that "This collection agency is licensed by the Minnesota Department of Commerce."

New York – Diversified Collection Services, Inc. is licensed to operate in New York City under License Number 0958746.

North Carolina – Diversified Collection Services, Inc. is licensed to operate under Permit number 3142.

Tennessee – Diversified Collection Services, Inc. is licensed by the Collection Service Board, State Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243.

Wisconsin – Wisconsin Law requires that we inform you that "This collection agency is licensed by the Office of the Administrator of the Division of Banking, P.O. Box 7878, Madison, WI 53707."

LAW OFFICE
KLEINMAN LLC
626 REXCORP PLAZA
UNIONDALE, NEW YORK 11556-0626

ABRAHAM KLEINMAN
ATTORNEY AT LAW

TELEPHONE
(516) 522-2621

FACSIMILE
(888) 522-1692

November 21, 2007

VIA FACSIMILE ONLY

(925) 960-2397

Mr. Steve Sorensen

Diversified Collection Services, Inc.

P.O. Box 9046

Pleasanton, CA 94566-9046

YOUR ACCOUNT NUMBER 90203328787

Dear Mr. Sorensen:

Please be advised that I represent Salvador Diaz.

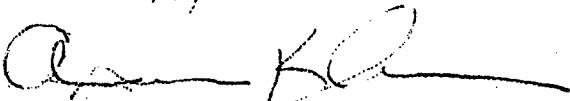
Please be advised that my client disputes the validity of the debt.

Please send Abraham Kleinman verification of this disputed debt.

Please send Abraham Kleinman itemization and the basis of court costs, collection fees, interest fees or miscellany.

Please send Abraham Kleinman the name and address of the original creditor.

Thank You, ,

A handwritten signature in black ink, appearing to read 'Abraham Kleinman', with a long horizontal stroke extending to the right.

Abraham kleinman

EXHIBIT C

DCS

070949 2006230903A 0000735278 2

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Wisconsin – Wisconsin Law requires that we inform you that "This collection agency is licensed by the Office of the Administrator of the Division of Banking, P.O. Box 7876, Madison, WI 53707."

DIVERSIFIED COLLECTION SERVICES, INC.
A PERFORMANT COMPANY

333 NORTH CANYONS PARKWAY
SUITE 100
LIVERMORE, CA 94551

925 960 4800 MAIN
925 960 4880 FAX
PERFORMANTCORP.COM

DCS

7/2007 Rev. O

CHANGE OF ADDRESS:

Name

Address

City

State

Zip

Telephone



DEFENSE FINANCE AND ACCOUNTING SERVICE
DENVER CENTER

[REDACTED]

OCT 10 2007

SALVADOR DIAZ
201 STATE ROUTE 34 S
COLTS NECK NJ 07722

Dear Mr. Diaz:

Regarding Account Number 098-48-7391, a review of your account finds that your debt, in the principal amount of \$5,606.76, remains valid.

Records indicate you were incarcerated December 1, 2000, and entered a non-pay status due to having crossed your original Enlistment Termination of Service (ETS) on that same date. In accordance with current law and regulation, you were entitled to no further pay after your ETS date. Your military pay account indicates you were paid \$3,405.47 in regular mid-month and end-of-month payments, and \$1,500.00 in allotments after that date. Additionally, Federal Income Tax Withholdings (FITW) of \$701.29 was paid in excess of what was due after that date. Since you received the benefit of these FITW when you filed your 2000 and 2001 returns, you now remain liable to repay them. Enclosed is a DFAS-DE Form 0-641, Statement of Military Pay Account, for your information and review.

Since your account has been referred to Diversified Collection Services (a private collection agency) you must contact their office to arrange payment. You may contact them at

[REDACTED]

Sincerely,

[REDACTED]
T [REDACTED]

Fiscal Quality Specialist
Directorate of Debt and Claims
Management

Enclosure:
As stated

STATEMENT OF MILITARY LEAVE ACCOUNT

NAME		SSAN	RANK	SERVICE	INCLUSIVE DATES OF ACTIVE DUTY		
					FROM	TO	
DIAZ, SALVADOR		098-48-7391	E1	N	Oct 01, 2000	Jul 01, 2004	
LEAVE EARNED		NO. OF DAYS	PERIODS OF LEAVE USED				NO. OF DAYS
			FROM	TO	C	TYPE	
Brought Forward Prior F/Y		25.0	001020	001026	A	Ordinary	7
Earned FROM TO			001107	001126	A	Ordinary	20
001001	001130	5.0					0
		0.0					0
		0.0					0
		0.0					0
Periods of Non-Accrual							0
Military Confinement: 001201	040701	0.0					0
		0.0					0
		0.0					0
		0.0					0
		0.0					0
		0.0					0
		0.0					0
		0.0					0
		0.0					0
		0.0					0
		0.0					0
		0.0					0
TOTAL EARNED		30.0	TOTAL USED				27.0
ACCRUED LEAVE BALANCE		3.0					
NON ACCRUAL		0.0					
TOTAL ACCRUED LEAVE		3.0					

Computation of entitlements

Leave accrual/non-accrual

<u>Entitlements</u>	<u>Daily Rate</u>
1. Basic Allowance for Housing (BAH)	
2. Basic Allowance for Subsistence (BAS)	
3. Per Diem	
4. Travel Allowance	
5. Commissary Allowance	
6. Medical Allowance	
7. Religious Allowance	
8. Other Allowances	
Total	

1 - 6 = .5 days

7 - 12 = 1.0 days

13 - 18 = 1.5 days

19 - 24 = 2.0 days

25 - 30 = 2.5 days

EXPIRATION OF TERM OF SERVICE (ETS): 001130

NOT ENTITLED TO PAY AND ALLOWANCES AFTER ENTERING

CONFINEMENT DUE TO ETS PRIOR TO CONFINEMENT.

DoD Accrued leave payment reference

<http://www.oxfordjournals.org/>

\$0.00

90203328787



*U.S. Treasury – Financial Management Service (FMS)
Birmingham Debt Management Operations Center
Birmingham, AL 35283*

October 18, 2007

Diversified Collection Services

1 [REDACTED]
L [REDACTED] 30

FedDebt Case No.: 2006230903A

In reply to a dispute submitted by the debtor, attached is debt information from the originating agency or their response to the dispute.

Per the agency, the debt is **valid** and collection should continue.

[REDACTED] Analyst
Debt Resolution Branch

Attachment

CG/dl

WARNING

The Sensitive but Unclassified (SBU) information attached to this letter is U.S. Government Property. If you are not the intended recipient of this information, then disclosure, reproduction, distribution or use of this information is prohibited (18 USC, 641). Please notify the Originator immediately to arrange for proper disposition.

Treasury Cross-Servicing Dispute Resolution

SBU

DMS Request Date: August 17, 2007
 FedDebt Case ID: 2006230903A
 Creditor Agency Debt ID: 098487391L
 Debtor: SALVADOR DIAZ

Total Number of Pages: _____
 Principal Amount: \$5,606.76
 PCA Code: DCSB

Program: DoDDCM For CMS Use Only: _____
 Creditor Agency Contact Name: S [REDACTED] HIC: _____
 Creditor Agency Contact Phone: 30 [REDACTED] Beneficiary Name: _____
 Creditor Agency Facsimile: 30 [REDACTED]

2007 OCT 18 AM 9:09

Dispute Number: DIS2007013585

Dispute request reason: MD00 Miscellaneous Dispute

Additional Comments: Debtor disputes claim - states that he is no longer incarcerated & is entitled to pay debt commencing from time of his release from prison. See attached media dated 8/10/07.

If you have any questions regarding the dispute, please call Valencia Thompson at 205-912-6327.

Creditor Agency must return response to Bosch Stanley via facsimile 205-912-6374 within 60 days of request date.

Creditor Agency (CA) Dispute Resolution Section:

Please indicate a response by checking one of the following reasons. Please attach supporting documentation.

DAIC ____ CA agrees. Debt amount is incorrect. Requires financial adjustment.

DACC ____ CA disagrees. Debt amount is correct. Continue collection efforts.

MDAA ____ CA agrees. Miscellaneous dispute, stop collection activity.

MDFF ____ CA agrees. Miscellaneous dispute. Requires financial adjustment, continue collection efforts.

MDDD ____ CA disagrees. Miscellaneous dispute. Continue collection efforts.

VDWD ____ CA agrees. Wrong debtor, stop collection activity.

VDRD ____ CA disagrees. This is not the wrong debtor, continue collection efforts.

VDPP ____ CA agrees. Previously paid, stop collection activity.

VDNP ____ CA disagrees. Not previously paid, continue collection efforts.

VDPR ____ CA agrees. Previously resolved, stop collection activity.

VDNR ____ CA disagrees. Not previously resolved, continue collection efforts.

Financial Adjustment Information (To Be Completed By Creditor Agency):

Principal Amount	\$ _____
Interest Amount	\$ _____
Penalty Amount	\$ _____
Admin Cost Amount	\$ _____
Total Balance Owed	\$ _____

Please check one of the following:

- ☐ Adjustment reflects the total balance currently owed by the debtor, and has been made by our Agency.
☐ Adjustment has not been made in FedDebt by the Agency, and should be made by DMS.

Creditor Agency Response Date: 007 10 2007 Creditor Agency Response Contact: J. Scholla
 Additional Comments By Creditor Agency: _____

Response attached.



DFAS-DE FORM 0-641, MAY 91

STATEMENT OF MILITARY PAY ACCOUNT

DISCHARGE PRECLUDES PAYMENT OF ACCRUED LEAVE